

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: BAIR HUGGER FORCED AIR  
WARMING PRODUCT LIABILITY  
LITIGATION

MDL No.: 15-md-02666 (JNE/DTS)

This Document Relates To:

PHILIP K. ALBERT, JR.,

Plaintiff,

Civil Action No.: 18-cv-02938

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**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

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NOW COMES Plaintiff, Philip K. Albert, Jr., identified in Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1933], and by and through undersigned counsel submits this, his Response to Defendants' Motion to Dismiss, and would respectively show the Court the following:

**FACTS AND ARGUMENT**

In October 2015, Mr. Philip Albert, Jr. contacted undersigned counsel regarding an infection and subsequent treatment that he experienced due to the use of a Bair Hugger patient warming device during an orthopedic surgery. Counsel worked to obtain medical records and billing records to move forward with the case. Those records indicated that a Bair Hugger device was used during the original surgery. On October 16, 2018, counsel filed the current action to comply with what was identified as the applicable statute of limitations deadline for the relevant claim.

Efforts to have Mr. Albert complete the Plaintiff Fact Sheet have been unsuccessful. Staff at Kennedy Hodges have placed several phone calls to Mr. Albert since September 2018 and have spoken with him regarding the Plaintiff Fact Sheet but have been unable to obtain the information required to complete the Plaintiff Fact Sheet. Several letters have also been sent to the same effect. Mr. Albert has stated that he intends to provide the necessary information. However, counsel have thus far been unable to obtain that information from Plaintiff to complete the Plaintiff Fact Sheet, and some deficiencies remain.

While counsel has diligently continued their attempts to obtain the requested information, those efforts have not been successful to date. As a result, counsel has not been able to obtain the necessary information to complete the Plaintiff Fact Sheet for this claim. Counsel for Plaintiff believe that additional time could allow them to work with Plaintiff to obtain the information needed to submit a completed Plaintiff Fact Sheet.

### **CONCLUSION**

Accordingly, undersigned counsel request that the current action not be dismissed with prejudice and that Plaintiff be given an additional ninety (90) days so that he can provide counsel with the necessary information to complete the Plaintiff Fact Sheet and cure any alleged deficiencies, therefore allowing for the case to be continued.

Dated: June 12, 2019

KENNEDY HODGES, LLP

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